IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN SECTION OF TENNESSEE
WESTERN DIVISION

SCOTT TURNAGE, CORTEZ D. BROWN, DEONTAE TATE, JEREMY S. MELTON, ISSACCA POWELL, KEITH BURGESS, TRAVIS BOYD, and TERRENCE DRAIN on behalf of themselves and all similarly situated persons, PLAINTIFFS, v. BILL OLDHAM, in his individual capacity and in his official capacity as the Sheriff of Shelby County, Tennessee; ROBERT MOORE, in his individual capacity and in his official capacity as the Jail Director of the Shelby County, Tennessee; CHARLENE McGHEE, in her individual capacity and in her official capacity as the of Assistant Chief Jail Security of Shelby County, Tennessee; DEBRA HAMMONS, in her individual capacity and in her official capacity as the Assistant Chief of Jail Programs of Shelby County, Tennessee; SHELBY COUNTY, TENNESSEE, a Tennessee municipality; and TYLER TECHNOLOGIES, INC., a foreign corporation, DEFENDANTS.	**Case No. 2:16-cv-2907-SHM-tmp** (Hon. Judge Samuel H. Mays) **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. § 1983, AND TENNESSEE COMMON LAW** **JURY TRIAL DEMANDED PURSUANT TO FED. R. CIV. PRO. 38(a) & (b)** **CONSOLIDATED WITH:**

MELVIN INGRAM et al., on behalf of themselves and all similarly situated persons, PLAINTIFFS, v. BILL OLDHAM, in his individual capacity and in his official capacity as the Sheriff of Shelby County, Tennessee; ROBERT MOORE, in his individual capacity and in his official capacity as the Jail Director of the Shelby County, Tennessee; CHARLENE McGHEE, in her individual capacity and in her official capacity as the of Assistant Chief Jail Security of Shelby County, Tennessee; DEBRA HAMMONS, in her individual capacity and in her official capacity as the Assistant Chief of Jail Programs of Shelby County, Tennessee; SHELBY COUNTY, TENNESSEE, a Tennessee municipality; and TYLER TECHNOLOGIES, INC., a foreign corporation, DEFENDANTS.	**Case No. 2:17-cv-02795-SHM-tmp** (Hon. Judge Samuel H. Mays)

THE *POWELL* PLAINTIFFS'OPPOSITION TO INGRAM PLAINTIFFS' MOTION TO "ADOPT" THEIR PROPOSED CONSOLIDATED CLASS ACTION COMPLAINT AND FOR ADDITIONAL TIME TO RESPOND TO THE PREVIOUSLY FILED MOTION FOR INTERIM CLASS COUNSEL

Plaintiffs Scott Turnage, Cortez D. Brown, Deontae Tate, Jeremy Melton, Issacca Powell, Keith Burgess and Terrence Drain (hereinafter collectively referred to as the "*Powell* Plaintiffs"), by and through their undersigned counsel of record, submit their Response in Opposition to the *Ingram* Plaintiffs' Motion to "Adopt" their Proposed Consolidated Class Action Complaint and for Additional Time to Respond to the Previously Filed Motion for Interim Class Counsel and would state as follows:

1. As described in the *Powell* Plaintiffs' Notice of their Request that this Honorable Court Consider and Rule on their Previously Filed Rule 23(g)(3) Motion for Appointment of Interim Class Counsel (ECF No. 80) in Order that, *Inter Alia*, a Consolidated Class Complaint May be Filed (filed as ECF No. 93), the *Powell* Plaintiffs drafted and submitted to the *Ingram* Plaintiffs a proposed Consolidated Class Complaint that included some but not all of the plaintiffs named in the *Ingram* Action.

2. The *Ingram* Plaintiffs were apparently unaware of the Court's Order requiring a consolidated class action complaint, and, thus, they filed an unopposed Motion for Extension of Time to consider same and confer with counsel for the *Powell* Plaintiffs. (ECF No. 91), which the Court granted.

3. During the Court's extension, counsel for *Powell* Plaintiffs communicated several times in good faith with counsel for the *Ingram* Plaintiffs in an effort to reach an accord as to the contents of the proposed Consolidated Class Complaint. The parties were unsuccessful in this aspect of the litigation.

4. Counsel for *Powell* Plaintiffs believes that disclosing the specific content of those discussions is contrary to the best interests of the putative class and generally inappropriate, particularly since these discussions are protected by the attorney-work product privilege. Suffice it to say, however, the *Powell* Plaintiffs' proposed Class Action Complaint (which included some of the plaintiffs named in *Ingram*) and their inability to agree to same with the *Ingram* Plaintiffs'

version was based solely on legal strategy and not on an effort to seize some sort of a economic advantage in this matter as the *Ingram* Plaintiffs speculate in their Motion to "Adopt" the proposed Class Action Complaint.[1]

5. Counsel for the *Powell* Plaintiffs further submit that the *Ingram* Plaintiffs' request that the Court "pick" their proposed Class Action Complaint as the operative complaint in this putative class action is also improper, if not unheard of in federal class litigation. The Court cannot and should not become an advocate by selecting which proposed class action complaint it thinks bests fills the bill in this matter. Instead, under the authority granted to the Court by Rule 23(g)(3), the Court should appoint interim class counsel, who will then make this legal determination, which must be made in the best interests of the putative class. *See, e.g., Levin v. HSBC Bank USA, N.A (In re HSBC Bank USA, N.A.),* 2013 U.S. Dist. LEXIS 102221, 2013 WL 3816597 (E.D. N.Y. Jul. 22, 2013)(district court consolidated two identical class actions under Rule 42(a) and, noting that counsel in the two actions were not in agreement to work together, court granted interim class counsel and ordered consolidated complaint be filed).

6. In this matter, there are, unfortunately, too many plaintiff cooks in the proverbial kitchen and, thus, the appointment of interim class counsel is truly needed. As a result, *Powell* Plaintiffs submit that the *Ingram* Plaintiffs' Motion to "Adopt" their proposed Class Action Complaint be denied and that they be ordered to respond in seven (7) days to the *Powell* Plaintiffs' previously filed Motion for Appointment of Interim Class Counsel (ECF No. 80).

[1] It should be noted that the *Ingram* Plaintiffs' Motion fails to comply with LR 7.2(a)(1)(B); they never consulted with the *Powell* Plaintiffs prior to the filing of their Motion, as they admit. This is grounds alone for the Court to deny the Motion to Adopt. *See, Jackson v. WMC Mortg. Corp*., 2013 U.S. Dist. LEXIS 146084 at *19 (W.D. Tenn. Sept. 18, 2013)(" Plaintiff's failure to consult with opposing counsel provides good grounds to deny his motion"). However, as demonstrated *infra*., the *Ingram* Plaintiffs' Motion should also be denied on its merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that the above and foregoing was filed on May 7, 2018, using the CM/ECF system with the above-captioned court, with notice of case activity to be generated and sent electronically by the Clerk of said court to the following parties and/or served via U.S. Mail postage pre-paid and/or by email:

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